

NO. 84949-8

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

JORGE ARIEL SAENZ,

Defendant/Petitioner.

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STATE OF WASHINGTON
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SUPPLEMENTAL BRIEF OF RESPONDENT

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I. ISSUES

1. Whether the State proved the existence of a prior most serious offense conviction by means of a judgment and sentence, as well as the defendant's written stipulation and agreed order, in which he waived his right to a declination hearing, and agreed to an order declining juvenile court jurisdiction and remanding the matter to adult court?

2. Is a juvenile court required to enter written findings of fact as to the bases for a declination, when the defendant waives his right to a hearing altogether, and agrees to the declination of juvenile jurisdiction?

3. Should this Court reject Saenz' argument that the Court of Appeals decision, holding that the record supported a knowing and intelligent waiver of the right to a declination hearing, misinterprets the statutory requirements for waiver of juvenile jurisdiction, or is in conflict with other decisions of this Court and the Court of Appeals?

II. STATEMENT OF THE CASE

A complete recitation of the facts is contained in the parties' briefs filed in the Court of Appeals. (**Appellant's Brief at 3-10, Respondent's Brief at 2-4**)

III. ARGUMENT.

1. **The State proved the prior most serious offense, as a judgment and sentence was entered in the prior offense court only after a waiver of juvenile court jurisdiction.**

As previously stated, at issue here is the validity of Mr. Saenz' prior conviction for second assault, entered in Lewis County Superior Court cause number 01-8-00067-5, and whether it constituted a prior "most serious offense" for purposes of the Persistent Offender Accountability Act, RCW 9.94A.030(28). It is undisputed that Mr. Saenz was fifteen years of age at the time the predicate offense was committed on December 29, 2000. Mr. Saenz asks this Court to overturn the Court of Appeals decision on his direct appeal, which in turn reversed the trial court's decision that the conviction should not count as a prior most serious offense since constitutional due process was not followed in the Lewis County court. Specifically, Saenz argues that he did not knowingly and intelligently enter an express waiver of his right to a declination hearing, and in the absence of written findings demonstrating the basis for declination of juvenile jurisdiction, that conviction should not count as a "strike" under the POAA. He is incorrect.

It is well-established that the State bears the burden of showing that predicate offenses constitute strikes under the POAA, by a

preponderance of the evidence. In re Pers. Restraint of Cadwallader, 155 Wn.2d 867, 876, 123 P.3d 456 (2005).

Under the POAA, a person under the age of 18 years is an offender if there has been a declination of jurisdiction by a juvenile court, or if the charged crime is one which falls under the jurisdiction of the superior court automatically. RCW 13.04.030; In re Pers. Restraint of Dalluge, 152 Wn.2d 772, 780, 100 P.3d 279 (2004). There is no constitutional right to be tried in juvenile court. Id., at 784, *citing* State v. Salavea, 151 Wn.2d 133, 140, 86 P.3d 125 (2004).

If a defendant is under the age of 18 years, and there is no evidence on record disclosing that the offense constituted an automatic decline or that there was a declination of juvenile jurisdiction, the State has not met its burden. State v. Knippling, 166 Wn.2d 93, 101, 206 P.3d 332 (2009).

In Knippling, the juvenile defendant was originally charged with first degree robbery, an offense over which the superior court had automatic jurisdiction. However, as part of a plea negotiation, the charge was reduced to second degree robbery, an offense which would have required a declination proceeding. There was none, and the record consisted of only a judgment and sentence, without any explanation of how or why that judgment came to be entered in superior court. Id., at 97-98.

This Court concluded that in that case, the State had not met its burden to show either automatic jurisdiction, or declination of jurisdiction by the juvenile court. Id., at 101.

It cannot be emphasized enough that the facts in the instant case are very different, and easily distinguished, from those present in Kippling. Instead of just a judgment and sentence, there is on the record an order declining jurisdiction, which incorporates Saenz' waiver of his right to a declination hearing. (CP 110-11) For this, as well, the Court of Appeals' decision below does not conflict with Knippling.

Saenz further argues that in the absence of written findings on the part of the Lewis County court, there is no proof of why the juvenile court declined jurisdiction. Simply put, there would be no need for written findings as to declination, as there was no hearing. In giving up the hearing process completely, it follows that Saenz gave up the right to have the court identify the factual bases for declination. Put another way, the proof of why the juvenile court declined jurisdiction is the stipulation and agreed order itself.

2. **The Court of Appeals decision does not conflict with Ramos, or the relevant statutory provisions.**

Saenz maintains that the decision below also conflicts with a prior decision by Division III of the Court of Appeals, State v. Ramos, 152 Wn. App. 684, 217 P.3d 384 (2009). In that case, the court held that a juvenile has the authority to waive his right to a declination hearing, and that the juvenile court did not err by transferring the case to adult court at the request of the parties. Id., at 693.

Saenz places great weight on the procedure the juvenile court followed in Ramos, namely that the defendant was questioned about his stipulation at length by the court, he had consulted with his mother about his decision, and a second legal opinion was sought as to the proposed plea offer. The court decided to decline jurisdiction after reviewing the stipulation, as well as the so-called Kent¹ factors. Id., at 689.

Saenz reads into that factual recitation a requirement that juvenile courts follow the same procedure, the same colloquy, when accepting a stipulation and waiver of juvenile jurisdiction. That, however, is not the holding in Ramos. Instead, in concluding that a juvenile is permitted to decline jurisdiction of his case, the court cited RCW 13.40.140(9), which reads:

¹ Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966)

Waiver of any right which a juvenile has under this chapter must be an express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived.

RCW 13.40.140(9)

As mentioned in the factual statements submitted below, Saenz was brought before the court first for a hearing in which he knowingly waived his right to a decline hearing within 14 days. At the subsequent hearing, his counsel reported that Saenz desired to have his case remanded, and that he had discussed the matter with her during three conversations.


The written stipulation and agreed order is an express waiver of Mr. Saenz' right to a declination hearing, and he had been informed by counsel of the implications of his decision. The statute does not require specific findings of fact to be entered by the court as to the waiver.

Indeed, Saenz' reliance on two cases cited in his briefing is misplaced. Both State v. Blair, 56 Wn. App. 209, 212-13, 783 P.2d 102 (1989), and Dutil v. State, 93 Wn.2d 84, 85-86, 606 P.2d 269 (1980), dealt with whether the juveniles had made a knowing and voluntary waiver of their right to remain silent prior to making statements to police.

IV. CONCLUSION

Based upon the foregoing arguments, this Court should affirm the decision of the Court of Appeals.

Respectfully submitted this 12th day of January, 2011.



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Deputy Prosecuting Attorney
Attorney for Yakima County


SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	NO. 84949-8
)	
Plaintiff/Respondent,)	SWORN STATEMENT OF SERVICE
)	BY MAIL
vs.)	
)	
JORGE ARIEL SAENZ,)	
)	
Defendant/Petitioner.)	

I, Elaine Chartrand, state that I am and was at the time of the service of the Supplemental Brief Of Respondent herein referred to, a citizen of the United States, residing at Yakima, Yakima County, Washington; that I am over the age of twenty-one years and am not a party to the within entitled action.

That on the 12th day of January, 2011, I served upon Tanesha LaTrelle Canzater, P O Box 29737, Bellingham, WA 98228-1737, Attorney for Defendant/Petitioner and Jorge Ariel Saenz, #822929, Washington State Penitentiary, Unit 6 Tier E Cell 214, 1313 N 13th Avenue, Walla Walla, WA 99362, the Defendant/Petitioner herein, a copy of the aforementioned instrument, by putting the same, enclosed in sealed envelopes, postage paid, into the post office.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


Elaine Chartrand
January 12, 2011
at Yakima, WA